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Supreme Court of the United States

OCTOBER TERM, 1954

Brown, et al., *Appellants*
v.
Board of Education of Topeka, Shawnee County, Kansas, et al., *Appellees* } No. 1

Eubanks, et al., *Petitioners*
v.
Sharpe, et al., *Respondents* } No. 4

Gebhart, et al., *Petitioners*
v.
Belton, et al., *Respondents* } No. 5

ON SECOND RE-ARGUMENT

BRIEF OF AMERICAN VETERANS COMMITTEE, INC. (A.V.C.) *Amicus Curiae*

PHILIPAS ANDRUS
National Counsel
American Veterans Committee, Inc.
1751 New Hampshire Ave., N. W.
Washington 9, D. C.
NOrth 7-0581

November 12, 1954

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ON SECOND RE-ARGUMENT

BRIEF OF
AMERICAN VETERANS COMMITTEE, INC. (A.V.C.)
Amicus Curiae

PRELIMINARY STATEMENT

The American Veterans Committee, Inc. is a nation-wide organization composed of veterans who served honorably in the Armed Forces of the United States during World War I, World War II, or the Korean Conflict. Our interest in the Public School Segregation Cases was explicated in the briefs we filed on the previous arguments in the 1952 and 1953 Terms.

On May 17, 1954, this Court ruled that racial segregation in public schools violates the Constitutional guarantee of equal protection expressed in the Fourteenth Amendment, and implied in the Fifth Amendment, to the Constitution. *Brown* v. *Board of Education,* 347 U. S. 483; *Bolling* v. *Sharpe,* 347 U. S. 497. The cases were continued for further argument on Questions 4 and 5 set forth in this Court's order of June 6, 1953 (345 U. S. 972, 973).

THE FRAMEWORK WITHIN WHICH THE QUESTIONS SHOULD BE ANSWERED

It is, of course, not appropriate for this Court to try to anticipate the legality of every detail of every desegregation plan which, in the context of the particular pressures and attitudes influencing their members, each of the thousands of school boards may evolve in administering their school systems so as to comply with the requirements of the Constitution. *Cf. United States* v. *Paramount Pictures,* 334 U. S. 131, 163-164 (1948); *Nebraska* v. *Wyoming,* 325 U. S. 589, 616-617 (1945).

On the other hand, we think this Court should indicate in its decrees the principles underlying any method of desegregation, compliance with which will satisfy the Constitutional prohibition against racial segregation. This Court's order for reargument on Questions 4 and 5 has stimulated widespread interest in knowing what desegregation methods this Court would approve. Moreover, it is entirely possible that if this Court simply remands the cases "for further proceedings" without indicating the guide lines of acceptable desegregation methods, the way would be open for prejudiced school boards to remit each applicant for nonsegregated education, despite the *Brown* decision, to the arduous, tortuous and time-consuming process of prosecuting a separate suit in which the court of first instance would take over the administrative tasks properly belonging to the school board. That, indeed, is what the Attorney General of Florida urges in his Brief, pp. 61-65, sec. II. But that course might in some areas

excise the meaning from the Constitutional right, and would in some other areas open the door to a chaotic pulling-and-tugging in which the lower courts would be hard put to insist on applying the law rather than personal judgment concerning the community's "willingness to accept" the requirements of equal justice under law.

In our opinion, the lode-star in answering Questions 4 and 5 should be the principles inherent in this Court's ruling of May 17, 1954—(1) that under our Constitution all children, of any racial ancestry, including both those now in the public schools and those who may come into the public schools in the future, should and must be permitted to enter the same public schools which children labeled "white" could enter, and (2) that no public school authorities may, in their administration of the public school system, impose any distinctions or accord different treatment, by segregation or otherwise, on the basis of race, color or ancestry.[1]

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[1] That ruling blends with the body of the law. This court has uniformly and repeatedly held that the right to be free from racial discrimination by governmental authority is a "personal" right, not one to be merged with those of all others of the same race and balanced against the claims of all white persons averaged as a group. *Henderson* v. *United States*, 339 U.S. 816, 825-826 (1950); *Shelley* v. *Kraemer*, 334 U.S. 1, 22 (1948); *Mitchell* v. *United States*, 313 U.S. 80, 97 (1941); *Buchanan* v. *Warley*, 245 U.S. 60, 80 (1917); *McCabe* v. *Atchison, T. & S. F. Ry. Co.*, 235 U.S. 151, 161-162 (1914); *Missouri ex rel. Gaines* v. *Canada*, 305 U.S. 337, 351 (1938). The Constitutional requirement of equal protection of the laws applies to any person subject to group discrimination because of his identifiable racial or ethnic origin. *Hernandez* v. *Texas*, 347 U.S. 475 (1954). Since public education on a segregated basis is not equal education, he is entitled to such education on an unsegregated basis. *McLaurin* v. *Oklahoma State Regents*, 339 U.S. 637 (1950); *Brown* v. *Board of Education*, 347 U.S. 483 (1954); *Bolling* v. *Sharpe*, 347 U.S. 497 (1954). Moreover, he is entitled to receive such equal education, and it must be provided for him, "as soon as" it is provided for the white person. *Sipuel* v. *Board of Regents*, 332 U.S. 631, 633 (1948). These decisions were epitomized when this Court unanimously characterized the right to secure public education without racial discrimination as "personal and present." *Sweatt* v. *Painter*, 339 U.S. 629, 635 (1950).

SUMMARY OF ANSWERS TO THE QUESTIONS

The best way to take racism out of the schools (where it "has no place") and to let the schools merge into the neighborhood (where racial agglomeration may reflect voluntary association), is by assigning children on the basis of geographic school boundaries based solely on residential proximity and accessibility to the school. But, in the absence of special considerations, the Constitution does not necessarily compel a school board either to require such boundaries or to permit or prevent choice of school by the child. If, and so long as, racial factors are not involved, the method used is for the school board, not a court, to determine.

As to children now in school, the school board's obligation to administer orderly school programs without future regard to their race can be satisfied by a second method—i.e., by affording to each such child the opportunity to obtain, upon application, admittance or transfer to, and education in, a school near his residence without being subject to racial distinctions. This voluntary application method permits adjustment to desegregation which, without d nying any child's Constitutional rights, will lean heavily on the readiness of the local community and, in areas of diffidence to voluntary mixing, will permit more gradual desegregation than would the use of compulsory school boundaries. The essence of this voluntary method is that the child's right to admission to any school may not be denied on the basis of race; the process of adjustment to a nonsegregated school system will begin and be effected as such applications are made.

Any other method of gradual adjustment to a nonsegregated system is either not permissible or inappropriate under the judicial process. In any event, this Court should specifically reject the notion that, until such time as the "hard core of public opinion has softened to the extent that there can be at least some measure of acceptance on the part of a majority of the people," school boards may

reject applications for equal education. Adoption of such a proposal would be worse than reinstatement of the "separate but equal" doctrine.

With respect to students new to a particular school, the first alternative (assignment according to residential boundaries) will, but the second alternative (assignment on the basis of a voluntary application) will not, comply with the Constitution. The latter method implies that in the absence of an application, race or color will determine the assignment of the student. But by applying race or color in the assignment of new students to a school, the structure of segregation in public education will be strengthened and entrenched, instead of gradual adjustment occurring "from existing segregated systems to a system not based on color distinctions." To prevent such addition to the structure of racial segregation in public education, the school authorities should be required to assign new students either on the basis of normal residential school boundaries or, where there are no such boundaries, on the basis of reasonable criteria which do not include race or color. In making assignments not based on geographic boundaries, the school board may, if it wishes, permit the student to choose which school he will attend, but may not, in the absence of such choice by the student, assign him on the basis of his race or color or require him to file an application as a prerequisite to obtaining unsegregated education.

The decrees should become effective at the beginning of the school term immediately following the date of the decrees, but the court of first instance should be permitted to allow an additional school term if the school authorities show that unusual conditions involving technical and administrative difficulties require additional time for effective desegregation.

It is not clear whether this Court, in prescribing the time when the decree embodying these principles shall become effective, may permit extensive delay where such

delay would destroy Constitutional rights which are personal and present. In any event, the public interest does not require extensive delay.

As shown by experience in many areas of daily life, the fears that desegregation will cause widespread violence are largely wraiths and myths. Such experience also shows that rapid desegregation is often smoother and easier than segmentalized or gradual desegregation. The lag in the law, the inhibiting effect of mores and extra-legal pressures, the accumulated racial patterns of residence, and other factors, will provide ample "gradualism" without judicial espousal of "gradualism" as a legal doctrine. Isolated instances of hooliganism, stimulated by the current uncertainty as to the nature of this Court's decree, are not representative. In any event, the possibility of local friction is legally irrelevant in determining Constitutional rights.

This Court should not specify all details, either itself or through a special master, but should in its decrees include the principles mentioned above, enjoin the school authorities from considering race in administering school programs, and require the courts of first instance to deal initially with specific problems presented either by the school authorities or by those claiming deprivation of Constitutional rights under the general principles of this Court's decree.

This Brief suggests specific terms for inclusion in this Court's decree.

QUESTION 4

"4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or

(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?"

I. ANALYSIS OF METHODS TO BRING SEGREGATED SCHOOL SYSTEMS INTO CONFORMITY WITH THE CONSTITUTION

A. As to children now in a segregated school

In so far as concerns children who are now in a segregated school, there are two possible approaches to bringing the school system into conformity with the Constitution while at the same time not denying to any individual his personal and present rights under the Constitution.

(1) Normal geographic school districting

This Court's rulings of May 17, 1954, say that the many children who are now in segregated schools are being denied their Constitutional rights to equal education. This does not mean, and it is not our position, that school boards are under a constitutional mandate to go out looking for interracial school populations.

The duty of the school boards, we think, is solely to maintain orderly school programs without regard to race or color, to refrain from denying to any child admission into any school, and to refrain from treating any person in the school system differently, at any time, on the basis of race or color.

One way in which the school boards can fulfill this duty is by prescribing geographical school boundaries based,

not on race, but on the students' residential proximity and accessibility to the school, and by requiring all students within such boundaries to go to that school. The compulsory school attendance laws would thus simply cause the school to reflect the composition of the neighborhood. If the neighborhood is racially mixed, the school will be racially mixed; if the neighborhood population is all-white or all-colored, the school population will have the same hue.

We think, indeed, that this is, from an educational and community standpoint, the desirable way to end the racial aspects of public education with respect to the students. It would shift the issue of racial composition from the public schools, where, as this Court said in the *Brown* case, it "has no place," to the neighborhood, where racial agglomeration, if not imposed by governmental or other outside influences, may simply reflect the tendencies of voluntary association. Children who live and play in the same neighborhood would study together in the same school.

Moreover, assigning children to schools according to their residence within normal geographic school zones is the easiest way to operate a normal public school system without racial distinctions as to pupils. It is a factual, impersonal, and traditional criterion in administering public schools. Not only does it reflect the neighborhood pattern, but it also permits easier programming of school and community needs, and it avoids the imbalance between schools which results from unrestrained migration of pupils.

Nevertheless, in the absence of special considerations, we do not contend that the Constitutional guarantee of equal protection of the laws necessarily requires that boards of education be compelled to admit all children into schools solely on geographic basis, or that the boards be compelled to permit, or be enjoined from permitting, each child to select or transfer to any public school he wishes to attend. *Cf. Pierce* v. *Society of Sisters*, 268 U. S. 510 (1925); *Farrington* v. *Tokushige*, 273 U. S. 284, 298 (1927). The school board may permit children to go to

any school within the public school system, as in Baltimore, Maryland, or require them to go to the nearest school within a rigidly prescribed residence zone, as in some other cities. The choice of method is, in general, a matter of public school administration which is committed to the sound judgment of the school officials. So long as such judgment applies equally to both white and colored children similarly situated and is not based on racial factors, it is not a matter of constitutional concern.

(2) Voluntary transfer to unsegregated schools

The second way that the school boards could afford to each child then in a school his Constitutional right not to be subjected to compulsory racial segregation in public education, is by permitting him to continue in that school or to transfer to another school, the board acting solely on the basis of applicable scholastic considerations without regard to race. If, as in Baltimore, there are no prescribed neighborhood school boundaries, (except for students at a few overcrowded schools), the student could apply to transfer to any school within the school system. In cities or places where neighborhood school boundaries (which are not based on race) are prescribed, his application to transfer would, of course, be limited to the school within whose boundaries he resides.[2]

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[2] Compare the similar approach adopted by the Delaware State Board of Education on August 26, 1954, in its memorandum *Some Items and Suggestions Relative to Desegregation Plans*, mimeographed, p. 3:

> "If a school district has more than one building serving a given grade, attendance at a particular school could be decided by choice of the student provided, in the event of insufficient space at a particular school, preference should be given students residing nearest the school in question.
>
> "The State Board of Education believes that constitutional requirements are met either by integration within the fixed attendance areas or integration based on a single attendance area wherein freedom of choice is exercised to the extent that physical facilities will allow. The decision as to which type of attendance plan is established in a school district ultimately rests with the local board of education."

True, it might be said that to require a child to file an application in order to get the equal education to which he is Constitutionally entitled, is itself to impose a burden on the child, and that the school board, not the child, ought to initiate what must be done to provide equality of education in the Constitutional sense. However, in view of the considerable administrative adjustments and time that would be required to turn the massive ship of segregated public schools into its newly charted course, it is not unreasonable to ask those who are now in that boat to exercise their "personal" Constitutional right by applying for admittance to a school wherein they will be admitted and educated without racial segregation or other racial distinctions.

One advantage of this voluntary application method is that, without denying the Constitutional rights of any individual, the adjustments made under it would lean heavily on the state of readiness that each local community may have for integration. Thus, where there is either inertia, or a personal or scholastic reason which leads children to desire to remain in their school, or, in some areas, a diffidence to voluntary mixing of school children heretofore separately educated, the method here suggested would permit a more gradual integration than would occur where compulsory school boundaries are invoked to aid integration. This, indeed, has been the experience in several of the public school systems where students were permitted, in September 1954, to attend the school nearest their home, or, subject to the priority of neighborhood children to attend particular schools which are overcrowded, any school they chose to attend. *E.g.*, in Baltimore, Md., where 39 percent of the 141,000 children are Negro, only about 2.5 percent of the total Negro enrollment chose to go to schools formerly attended only by white children; in Springfield, Mo., almost half of the Negro children chose to remain in the school they previously attended; in Wichita, Kans., only small numbers of Negroes chose to attend schools which formerly

served only white students. *Southern School News*, vol. 1, no. 2, pp. 8, 10, 16 (Oct. 1, 1954).

On the other hand, one of the disadvantages of the voluntary application method would be that it permits substituting the irresponsibility and uncertainty of "mores" (and perhaps extra-legal social or economic pressures) in lieu of orderly application of the compulsory school laws in the context of Constitutional requirements.

The essence of this voluntary application method is that any child now in a segregated school should have the right to apply at any time for admission to a school, at the beginning of a school term, on the basis of proper scholastic criteria which do not include race or ancestry, and that the school board must be enjoined from denying his application solely on the basis of race, color or ancestry. Thus, the process of adjustment to a nonsegregated school system will begin and be effected as such applications are made and granted. Whatever problems may arise can and should be dealt with then.

Every other method of "gradual" adjustment to a nonsegregated system which we have considered (*i.e.*, which does not require or permit education in a school near one's residence without regard to race or ancestry) would either violate the personal and present right of particular persons, or provide prejudiced boards with an excuse for interminably dragging their heels, or both, or are not, we think, appropriate for judicial action. Thus, procedures such as integrating only a limited or specific number of schools, or grades, per year, would disregard the rights and needs of individual children in other schools, or grades, who seek nonsegregated education. Moreover, judicial authorization of such arbitrary methods would encourage evasiveness and procrastination in conforming to the requirements of the Constitution. Also, clearly, gradual desegregation which is based solely on prior change of community attitudes toward desegregation, through use of such techniques as intercultural education and mass

communication, training of teachers, administrators and police, etc., not only is disregardful of the present rights of the children seeking unsegregated education but also is beyond the scope of the litigious process and of the judicial power.

In any event, we urge that this Court totally reject the notion advanced by the Attorney General of Florida (Brief, item (5) on p. 63) that the school board be allowed to refuse a Negro child's application for admission to non-segregated education if there is "such a strong degree of sincere opposition and sustained hostility on the part of the public" [apparently he means that portion which is prejudiced against Negroes] as to lead the school authorities to believe that approval of the application would cause "a disruption of the school system" or create "emotional responses among the children which would seriously interfere with their education." That proposal, keyed as it is to criteria of the vaguest sort, means only that the guardianship of Constitutional guarantees should be surrendered to prejudice, mob hostility, and the thoughtlessness of immature children emotionally titillated by parental racism.

Furthermore, such a proposal would be worse than reinstatement of the "separate but equal" doctrine. To prove that the "hard core of public opinion has softened to the extent that there can be at least some measure of acceptance on the part of a majority of the people," which is what the Attorney General of Florida says a Negro child must prove before he can obtain equal education (Brief, p. 43), would be infinitely more onerous than to prove inequality of physical facilities. Such a proposal would relegate Constitutional rights to popularity polls in which the deciding ballots would be cast by those who are most biased and least law-abiding. Indeed, if that proposal were adopted, this Court's rulings of May 17, 1954 that racial segregation in public education is unconstitutional would become, in the words of the late Mr. Justice Jackson,

"only a promise to the car to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." *Edwards* v. *California*, 314 U. S. 160, 186 (1941).[3]

In any event, the fears which underlie the proposal of the Attorney General of Florida are not legally relevant, and even if they were, part III of our Brief points out that there is no substantial basis for them.

B. As to children who enter a particular school for the first time

Somewhat different, and special, considerations are applicable to students who are ready to enter a particular school for the first time (either by virtue of beginning public school education, transfer of residence, or graduation from a lower level school). The first alternative—

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[3] We cannot over-emphasize the importance of fulfilling the promise of May 17, 1954. The whole world has been discussing it. Typical of World opinion this side of the Iron Curtain (except in South Africa where *Die Transvaler* deplored the decisions) was the editorial comment in *Journal d'Égypte* (Cairo, Egypt, May 30, 1954): "This human victory which America has just won over herself brings her a world wide prestige far superior to any that a demonstration of her military or financial strength might have brought." The *Berlingske Aftenavis* of Copenhagen, Denmark, said that this Court's decisions of May 17 were a "victory . . . for the United States as a pioneer for human freedom and equality." The conservative *Yorkshire Post* in London predicted (May 20, 1954) that the decisions "will help stem Communism among the colored peoples of Asia and other parts of the world." The *Statesman* of New Delhi, India, emphasized (May 20, 1954) the contrast between this Court's decisions and the *apartheid* madness of Prime Minister Malan in South Africa, but cautioned "it remains to be seen how and when the decision will be enforced."

On the other hand, Soviet propaganda has stressed "how small the practical value" of the decisions is, and that this Court, by this very reargument, "prepares for itself the way to a retreat." Article by S. Kondrashov, section A, *Izvestia* (June 23, 1954). The Milford, Delaware, incident served as a further opportunity for Moscow to charge that this Court's ruling of May 17 "was only meant for publicity" and that the authorities "had no intention of enforcing it." U. S. Information Agency report, Oct. 6, 1954.

assigning them on the basis of normal geographic school boundaries—would satisfy the Constitution as to them just as it would for children now in school. But unlike the case of children now in the school, to apply the second alternative—the voluntary application method—to new students would probably tend to strengthen and further entrench segregation in public education. This is because the method of voluntary application implies that in the absence of an application the student would be assigned to a public school on a racial basis.

It is one thing to say that, in light of the considerable administrative adjustments and time necessary to shift to wholly nonsegregated operation, a school board may require students who were assigned to that school prior to this Court's decrees in these cases, even though on a racial basis, to continue to attend that school unless they voluntarily apply for transfer to another school. It is quite different to say that a school board may, *after this Court's decrees,* assign children to a school on the basis of race who have never previously been in that school.

Insofar as concerns the student who is ready to enter a particular school for the first time, if the school board assigns him to a school on the basis of his race and for the purpose of maintaining racial uniformity in the particular school, rather than exclusively on the basis of proper scholastic criteria (age, educational level, residential proximity and accessibility to the school, etc.) which take no account of race, it is at once apparent that he is being subjected to unconstitutional racial distinctions.

Even more important, it is also apparent that such action *extends and further entrenches* the structure of racial segregation in education and thus makes it more difficult, rather than easier, to change "from existing segregated systems to a system not based on color distinctions."

To prevent public education from miring deeper in the bog of unconstitutional racial segregation, the school board must be enjoined from imposing *additional* segregation.

This does not mean that the school board may not permit the student, where normal geographic boundaries are not prescribed, to choose which school he will attend. But it does mean that in the absence of such choice by the student, the school board may neither assign him on the basis of his race or color, nor require him to file an application as a prerequisite to obtaining unsegregated education.

Accordingly, in order to effect even the minimum compliance with the Constitution, this Court should, in its decrees:

(a) permit the school authorities to assign children to school in accordance with normal geographic school boundaries which are based on residential proximity and accessibility to the school, and not on race;

(b) prescribe that the school authorities, with respect to children then in school, shall not on the basis of race or color:

(i) either deny admission to any student who applies to transfer to a school within the normal residential school boundaries of which he lives;

(ii) or, if no boundaries are prescribed for a school, deny admission to any student who applies to transfer to that school;

(c) prescribe that the school authorities, with respect to any child who will, after the date of this Court's decree, be new to any particular school (either by beginning public school education, transfer of residence or graduation from a lower level school):

(i) shall assign such student to the school within the normal residential boundaries of which he lives, or

(ii) if no boundaries are prescribed, shall assign such student to a school on the basis of reasonable criteria, as determined by the school authorities, which do not include the factor of race. In making such as-

signments, the school board may, if it wishes, permit the student to choose which school he will attend, but shall not, in the absence of such choice, assign him on the basis of race or color, or require him to file an application as a prerequisite to obtaining unsegregated education.

(d) enjoin the school authorities from segregating or otherwise according different treatment to any person within a school on the basis of race or color. *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637 (1950).

The adoption of these principles will, we believe, provide a normal and impersonal method (1) for gradual desegregation which (2) recognizes the Constitutional rights of the children, and (3) affords no excuse by which prejudiced school boards may evade or interminably delay compliance with the Constitution.

II. WHEN THE DECREES SHOULD BECOME EFFECTIVE

In our opinion the decrees here suggested should be effective as of the beginning of the school term immediately following the date of the decrees, with provision for delay for an additional school term where the school board proves to the court of first instance that unusual technical or administrative difficulties require such delay.

Whether the equity power of this Court is sufficient to allow more extensive time for gradual adjustment to a nonsegregated system if more time is deemed necessary in the public interest is not entirely free from doubt. Of course this Court has power to consider, and has considered, the exigencies of the public interest in prescribing the time for compliance with its decrees. See 28 U.S.C. (1952 ed.) sec. 2106; *Hecht Co.* v. *Bowles,* 321 U.S. 321, 329-330 (1944); *Georgia* v. *Tennessee Copper Co.,* 206 U.S. 230, 239 (1907); *ibid.,* 237 U.S. 474 and 678 (1915); *ibid.,* 240 U.S. 650 (1916); *United States* v. *American Tobacco Co.,* 221 U.S. 106, 185, 187-188 (1911).

But all of these cases involved issues and rights other than the "personal and present" constitutional right to equal protection of the law. In those cases, delay in effectuating the decree did not forever destroy a person's civil right to have equal access to something which he could get only within a limited time or not at all. The present cases, on the other hand, involve injury to the children which "may affect their hearts and minds in a way unlikely ever to be undone." *Brown* v. *Board of Education,* at p. 494. To delay fulfillment of, and thereby to destroy, their Constitutional rights seems inconsistent with the equity function to protect the very Constitutional right (freedom from governmentally imposed racial discrimination) which was "the matter of primary concern" for the Framers of the Fourteenth Amendment. *Shelley* v. *Kraemer,* 334 U.S. 1, 23 (1948); *Hurd* v. *Hodge,* 334 U.S. 24, 32 (1948); *Strauder* v. *West Virginia,* 100 U.S. 303, 306, 310 (1880); *Slaughter-House Cases,* 83 U.S. (16 Wall.) 36, 70-72, 81 (1873); *Railway Mail Ass'n.* v. *Corsi,* 326 U.S. 88, 94 (1945).

In any event, what we say (see Part III of this Brief) is that the public interest does not require extensive delay in making effective the terms of the decrees as suggested above. We believe that the period between the issuance of the decrees and the opening of the next school term should provide ample time to make necessary changes in records and facilities, personnel assignments, and other purely administrative changes to a non-racial basis. Such administrative adjustments did not prove great obstacles in the desegregation programs of the relatively complex school systems of Washington, D. C., Baltimore, Md., Topeka, Kans., Wilmington, Dela., the States of New Jersey, Indiana, Illinois, and the many other areas where public school desegregation has been proceeding smoothly, effectively, and rapidly.

There may be unusual technical or administrative difficulties because of which one or some school boards may

need additional time to change from a segregated to a nonsegregated school system.[4] The decrees of this Court should therefore authorize the court of first instance to allow additional time for such adjustment, but not in excess of one school term at any one time—such additional time to be granted only when the court of first instance, in hearings at which the school authorities have the burden of proof by substantial and probative evidence, is convinced that because of unusual conditions involving technical or administrative difficulties such additional time is clearly needed to enable effective transition to a nonsegregated school system. Each such further extension of time for an additional school term should be predicated on the facts and circumstances then existing as proved by the school authorities in subsequent hearings before the court of first instance.[5] Opposition and hostility by part of the community to desegregation of schools should not

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[4] *E.g.*, in Dover, Delaware, it may be necessary to consolidate the separate board which administers the new high school for Negroes with the Dover Board of Education which administers the other public schools in Dover, both those for white students and those for Negro students. *Southern School News*, Vol. 1, No. 1, p. 3, col. 4 (Sept. 3, 1954). In some cases, also, revision of school district boundaries, to apportion children between schools on the basis of residence proximity and accessibility, may require legislative action. *Ibid.* Col. 5.

[5] It is of course proper and fair that the school authorities (who administer the school system, formulate its programs and schedules, have better opportunity to know the facts, and claim an exemption from the requirement of the law), should have the burden of proving why any child desiring nonsegregated education should be denied that right beyond the beginning of the next school term, and of showing how its plans for more gradual adjustment to a nonsegregated system could be justified under the Constitution and in the light of pertinent circumstances. See 9 Wigmore on Evidence (3rd ed.), sec. 2486, p. 275, and cases cited, n. 3, including 1953 Supplement. See also *United States* v. *Fleischman*, 339 U.S. 349, 360-361 (1950); *Commercial Corp.* v. *New York Barge Co.*, 314 U.S. 104, 111 (1941); *Schnell* v. *The Vallescura*, 293 U.S. 296, 304 (1934); *Rossi* v. *United States*, 289 U.S. 89, 91-92 (1933); *Selma, Rome & Dalton R. Co.* v. *United States*, 139 U.S. 560, 566 (1891).

in themselves be considered as constituting unusual conditions warranting delay in complying with the court's decrees.

III. "GRADUALISM" IS NOT NECESSARY TO ACHIEVE SMOOTH AND EFFECTIVE DESEGREGATION

There need be no fear that a decree such as we here urge will produce widespread friction and violence. Experience in many areas of daily life, including the administration of public schools, demonstrates that smooth adjustment to nonsegregated operation, in the South as well as the North, and on a large as well as on a small scale, can be accomplished rapidly. See Clark, *Desegregation: An Appraisal of the Evidence*, 9 Journal of Social Issues, No. 4, pp. 1-76 (1953); Time Magazine, *The U.S. Negro, 1953*, pp. 55-58 (May 11, 1953) (reprinted, 99 Cong. Rec., A5384-87); *ibid.*, *When the Barriers Fall*, p. 40 (Aug. 31, 1953); Wertham, *Psychiatric Observations on Abolition of School Segregation*, 26 J. of Educ. Soc. 333 (March 1953); Bustard, *The New Jersey Story: The Development of Racially Integrated Public Schools*, 21 J. of Neg. Ed. 275 (Summer, 1952).

Indeed, such adjustment is often facilitated by desegregating as rapidly as the necessary changes can be made in records, facilities, personnel, and other purely administrative affairs to a non-racial basis. Segmentalized "gradual" desegregation which is slower than that does not necessarily make the transition easier. On the contrary, it tends to stimulate an atmosphere of uncertainty and resentments, with the result that those who seek desegregation accelerate their efforts to end injustice, while those who wish to continue segregation intensify their efforts to evade, obstruct, and resist desegregation. Such "gradualism" thus heightens, rather than diminishes, both overt and latent tensions. A vivid illustration is the recent experience of the District of Columbia Recreation Board. During 1952 and 1953, that Board's efforts at gradual

and segmentalized desegregation, which ended segregation at a dozen or so individual playgrounds, visibly heightened racial tensions in Washington as the pro- and anti-segregationists pushed their views. See Phineas Indritz, *Racial Ramparts in the Nation's Capital*, 41 Georgetown L.J. 297, 327 (March 1953). But after the Recreation Board on May 18, 1954, abruptly abolished all racial distinctions simultaneously in all its facilities (over 100), racial tensions in public recreation calmed and ceased.

That large numbers of people are affected, that the proportion of Negroes involved may be substantial, and that the desegregation is relatively rapid, are not, *per se*, major obstacles to an effective and peaceful transition to a non-segregated community. The recent desegregation of the vast military establishment, as rapidly as administrative adjustments could be made, has been effected smoothly. Nichols, *Breakthrough on the Color Front* (1954); 99 Cong. Rec. A1982-84; *Freedom to Serve*, Rept. of President's Committee on Equality of Treatment and Opportunity in the Armed Services (Govt. Printing Off., May 22, 1950); *Integration in the Armed Services*, Progress Report of the Civilian Assistant to the Secretary of Defense (Aug. 31, 1954). "There are no longer any all-Negro units in the Services". *Ibid.*, p. 6.

After this Court's decision in *District of Columbia* v. *John R. Thompson Co., Inc.*, 346 U.S. 100 (June 8, 1953), racial discrimination in the restaurants of a large city having a "southern exposure" ended overnight, without friction or disturbance among the thousands of people who daily use them. Not long thereafter all remaining racial discrimination ceased in District of Columbia theatres and all publicly administered recreational facilities, and the many thousands who now sit and play next to persons of another race display no tremor or qualm.

During the past nine years (since 1945), more than 60 million Americans have obligated themselves, through their legislative representatives in 12 states and at least

32 municipalities, to abstain from racial discrimination in employment. Management has generally responded favorably and many unions are extending the principle of nondiscrimination, including nonsegregation. Davis, *Negro Employment: A Progress Report*, 48 Fortune 102 (July 1952); Ruchames, *Race, Jobs and Politics*, 192 (1953); Hope, *Efforts to Eliminate Racial Discrimination in Industry—With Particular Reference to the South*, 23 J. of Neg. Educ. 262 (Summer 1954). Recent surveys have shown that large percentages of Southern workers favor nondiscriminatory employment requirements, one survey showing 48 percent. Ruchames, *supra*, p. 192. With increasing industrialization, the South is, more and more, experiencing and accepting nondiscriminatory and nonsegregated employment. Time magazine, *Industry—Through the Color Barrier*, p. 104 (March 22, 1954); see also Statement of November 11, 1953 by President Eisenhower announcing the ending of racial segregation of civilian workers at Navy shore establishments in Southern states.

Moreover, the past 5 years have seen widespread effort to minimize racial discriminations and tension in many other areas. In the fields of housing and urban redevelopment, the federal government (which underwrites over 25 billion dollars of home mortgages) now refuses home loan guarantees or insurance (V.A. or F.H.A.) for property on which racial restrictive covenants have been recorded since February 15, 1950; and racial discriminatory practices are now prohibited by law in 11 States. In addition, either by municipal ordinance or other action, or by resolution of the local housing authority, racial discriminatory practices in housing are forbidden in 24 cities, including such large centers of population as Baltimore, Md., Washington, D. C., Wilmington, Del., New York, Los Angeles, Boston, Cleveland, Philadelphia, Cincinnati, St. Paul, etc. More than 60 cities have established Human Relations Commissions; and at least 50 Southern municipalities have adopted anti-mask ordinances designed to curb Klan terrorism.

As the thinking of America focuses on the subject of school desegregation, this Court's decision is receiving more and more affirmations of support from civic, religious, veterans, parent-teachers, labor, business, educational, and a host of other types of organizations. It is particularly significant that practically every major religious denomination has vigorously urged compliance with both the letter and the spirit of integration.

Illustrative of the tone of such support is the announcement by the National Council of the Churches of Christ in the U.S.A., on May 19, 1954, urging all churches and individuals "to exert their influence and leadership to help the authorized agencies in the several communities to bring about a complete compliance with the decision of the Supreme Court." See also the National Council's Statement *The Churches and Segregation* (June 11, 1952) urging elimination of segregation and exclusion policies at all church-related, as well as public, schools. Similar views have been expressed by the Southern Baptist Convention, the Southern Presbyterian 94th General Assembly (1954), the Southern Methodist Church (including the Conferences in Florida, North Georgia, Louisiana, North Arkansas, Southwest Texas, etc.), the Southeastern Province of the Protestant Episcopal Church, the Catholic Committee of the South, Southern B'nai B'rith lodges, the Disciples of Christ, many Southern councils of the United Church Women, and other active religious denominations. See Southern Regional Council, *Schools in the South*, pp. 6-7 (June, 1954); *ibid.*, *New South*, vol. 9, no. 8 (Aug. 1954).

These pronouncements are not simply pious hopes. They reflect what is actually happening in America. Racial discrimination is being abandoned or destroyed in the armed forces, in professional societies, in the entertainment world, in schools and colleges, in churches, in industry, in government, indeed, almost everywhere. It merits noting that

only 6 years ago no Negro could hope to play baseball in the major leagues, while now Negro ballplayers are heroes to millions of sports enthusiasts. See, *e.g.*, Tallulah Bankhead, *What is so Rare as a Willie Mays*, Look Magazine, vol. 18, no. 19, p. 52 (Sept. 21, 1954); E. B. Henderson, *The Negro in Sports* (1949).

Yesterday's announcements that the Disciples of Christ 105th International Convention in Florida voted for non-segregation (*Washington Post & Times Herald*, p. 24M, Oct. 31, 1954), and that the Medical Society of Virginia voted to admit colored physicians to membership (*Washington Evening Star*, p. B-1, Nov. 1, 1954), are similar to hundreds of recent instances illustrating how widely race bars are being dropped by voluntary and private groups without legal compulsion to do so.

Literally thousands of schools, in the South and throughout the country, which were operated until recently on a segregated basis, now have integrated student bodies, and many of them already have integrated teaching staffs in the particular school.

White and Negro children are already sitting side by side in church-supported schools in Arkansas, Kentucky, Maryland, Missouri, North Carolina, Oklahoma, Tennessee, Texas, Virginia, West Virginia, and other areas where segregation was the rule prior to this Court's decisions of May 17, 1954. See, *e.g.*, Release, Sept. 13, 1954, National Catholic Welfare Conference News Service. Schools on numerous military reservations throughout the South have already been integrated, and no segregated school will be operated on any military reservation after September 1, 1955. *Integration in the Armed Services*, Progress Report of Civilian Assistant to the Secretary of Defense, pp. 2-3 (Aug. 31, 1954). And according to the Southern Regional Council's list (October 1954), at least 116 colleges and professional schools in Southern and border states, both public and private, which were formerly restricted to white

students, are now desegregated. Although we do not have precise data as to how many private non-Catholic schools below college level have race bars no more, we do know they number in the hundreds.

Thousands of public elementary and secondary schools, too, have recently been desegregated. Virtually every section in Missouri has some form of integration in its public schools. In Arizona and New Mexico, public school segregation is now a thing of the past. In West Virginia, more than 25 counties have already fully or partially integrated their public schools. In Texas, at least 10 municipal junior colleges formerly restricted to white students now admit Negro students. These are but samples of the widespread growth of racial integration in the schools of America. See N. Y. Times, pp. 1, 74 (Oct. 3, 1954); *Southern School News,* Vol. 1, Nos. 1 and 2 (Sept. 3 and Oct. 1, 1954).

In three of the cases here involved, the picture is even more encouraging.

In *No. 1, Brown* v. *Board of Education:* In September 1953 the Topeka School Board, which had no segregation at the secondary school level, adopted the policy of desegregating the elementary schools as rapidly as practicable, and immediately terminated segregation in two elementary school districts. In September 1954, the Topeka Board of Education ordered complete integration in 10, and partial integration in 2, additional elementary school districts. Thus, at present, 14 of the 19 elementary schools previously attended by white children now have integrated student bodies; five schools are attended solely by white children; and four schools are attended solely by colored children. The Superintendent of Schools, in his letter of Sept. 24, 1954, advising us that in January 1955 he will announce the third step toward integration, stated as follows: "It is my belief that segregation will be terminated in this city

before the Supreme Court acts indicating the manner in which it should be accomplished."

In *No. 4, Bolling* v. *Sharpe:* Shortly after this Court's decision of May 17, 1954, the District of Columbia Board of Education adopted a policy of complete nonsegregation and the Superintendent of Schools initiated a program to implement that policy.

Up to the date of filing this Brief, most of the D. C. public schools have been wholly or partially desegregated by virtue of (a) transferring some 3000 Negro children from overcrowded schools chiefly to schools serving the areas where they live; (b) applying new non-racial school boundaries to all students (some 12,000) who in September 1954 were new to the school system; (c) permitting those who had changed their residences to another school zone to transfer to the school serving that zone; and (d) permitting approximately 1000 additional junior and senior high school students and approximately 900 other elementary school pupils to transfer to schools within the boundaries of which they live. Racial exclusion has been abandoned for all evening schools and for the two teachers colleges, and it is proposed to merge these colleges as soon as administrative details and facilities can be arranged. Teachers are being examined and assigned without regard to race.

In addition, all children still remaining in schools which are outside the boundaries within which they live may either remain in their present school until graduation or file applications for transfer to a school serving the school zone in which they live. The Superintendent of Schools has announced that these applications will be made effective either in February or September 1955; that children living within the school boundaries will, after September 1955, have priority, if the school is overcrowded, over those who live outside the boundaries; that all students gradu-

ating from junior high school in February 1955 will go to the high school serving the zone within which they live; and that in September 1955 the new boundaries will be applicable to all students except those remaining in a school until they graduate. The D. C. public school system serves over 100,000 students, 60 percent of whom are of Negro ancestry.[6]

In *No. 5, Gebhart* v. *Belton:* The two schools involved (Claymont high school and Hockessin elementary school) have been integrated since 1952. In addition, under the policy recently adopted by the Delaware State Board of Education which virtually incorporates the proposals we here urge (see footnote 2, *supra*), many other Delaware schools have already been integrated, in varying patterns and, except at Milford, without difficulty. Thus, in Newark, junior and senior high schools have been integrated. In Newcastle, integration has been smoothly introduced for first year children and all high school grades. In Wilmington, integration began in the summer school session; in September, integration was smoothly accomplished at the elementary school level where 67 percent of the students are now enrolled in schools attended by both white and colored children while the remainder attend schools which serve all-white or all-colored residential areas (no qualified Negro student sought transfer to any secondary school serving white children); and racial restrictions were removed from evening schools and all activities of extended services. See *Southern School News*, vol. 1, Nos. 1 and 2 (Sept. 3 and Oct. 1, 1954); Wilmington *Journal—Every Evening*, p. 1 (June 22. 1954); *ibid.*, pp. 1, 4 (Sept. 21, 1954).

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[6] *Washington Post & Times Herald*, p. 7M (May 23, 1954); p. 17 (May 26, 1954); p. 19 (June 10, 1954); p. 18 (June 24, 1954); p. 1 (July 2, 1954); p. 20M (Sept. 12, 1954); p. 1 (Sept. 14, 1954); p. 18 (Sept. 16, 1954); p. 1 (Sept. 17, 1954); pp. 1, 18 (Sept. 22, 1954); p. 19 (Sept. 25, 1954); *Southern School News, supra*, Nos. 1 and 2.

The recent highly publicized incidents, such as the picketing and threats which stopped or reversed integration plans of the local school boards at Milford, Dela., and White Sulphur Springs, W. Va., and the brief flurry of walkouts and truancy by a small proportion of the students in Baltimore, Md., and Washington, D. C., do not undermine our contention that "gradualism" is unnecessary to smooth integration. Those incidents were isolated instances of rowdyism, largely inspired by professional hate mongers. When compared to the overall picture of effective transition in the many areas where desegregation is taking place, these incidents, despite their notoriety, shrink to their proper miniscule proportion.[7]

Moreover, as shown in the newspaper reports from those localities, the vast majority of the local citizenry disavowed and deplored such defiance of law and order *e.g.*, see daily issues during October of: Wilmington *Journal—Every Evening*, Wilmington *Morning News*, *Baltimore Sun*, *Washington Post & Times Herald*, Washington *Evening Star*, etc.).

Indeed, it can be stated that the current atmosphere of uncertainty as to the nature of this Court's decree concerning the methods for desegregation of the public schools has undoubtedly been a large factor in encouraging the climate of overt hostility and active resistance to desegregation which stimulated those incidents. But after this Court's decrees outline the methods of compliance with the Constitution, accommodation and acceptance, even though

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[7] The Wilmington *Journal-Every Evening* appraised the Milford, Delaware outburst as "nothing more than isolated incidents of a few irresponsible persons getting briefly out of hand" (Editorial, Oct. 14, 1954), while the Washington, D. C. walkout consisted almost entirely of "teen-agers on a lark. It did not smack of real racial bigotry." *Washington Post & Times Herald*, p. 8, col. 2 (Oct. 19, 1954).

sometimes reluctant, will rapidly replace the present uncertainty and resistance.[8]

As actual experience has shown, "The likelihood of desegregation being accompanied by active resistance or violence is not directly dependent upon the degree of expressed racial prejudice among the whites prior to the desegregation. Prejudiced whites accommodate as well to a changed social situation as do less prejudiced whites. There is also some evidence that a change in the social situation brought about by desegregation tends to decrease the intensity of expressed racial prejudice." Clark, *Desegregation: An Appraisal of the Evidence*, 9 J. of Soc. Issues, No. 4, p. 47 (1953). These findings are, indeed, buttressed by the survey of attitudes on desegregation conducted under the auspices of the Attorney General of Florida which found:

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[8] *Washington Sunday Star*, p. A-2, cols. 2-4 (Oct. 3, 1954). In Clark, *Desegregation: An Appraisal of the Evidence*, 9 J. of Soc. Issues, No. 4, pp. 53-54 (1953), the key principles are stated as follows:

"VII. Active resistance, and sometimes violence, though rare, are associated with desegregation under the following conditions:

A. Ambiguous or inconsistent policy;
B. Ineffective policy action;
C. Conflict between competing governmental authority or officials.

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"VIII. The accomplishment of efficient desegregation with a minimum of social disturbance depends upon;

A. A clear and unequivocal statement of policy by leaders with prestige and other authorities;
B. Firm enforcement of the changed policy by authorities and persistence in the execution of this policy in the face of initial resistance;
C. A willingness to deal with violations, attempted violations, and incitement to violations by a resort to the law and strong enforcement action;
D. A refusal of the authorities to resort to, engage in or tolerate subterfuges, gerrymandering or other devices for evading the principles and the fact of desegregation;
E. An appeal to the individuals concerned in terms of their religious principles of brotherhood and their acceptance of the American traditions of fair play and equal justice."

"While the majority of white persons answering opposed the decision, it is also true that a large majority indicated they were willing to do what the courts and school officials decided." (Florida Brief, pp. 24, 108)

"29. A large majority of white principals and supervisors in all regions indicate that they would comply with the decision regardless of personal feelings but the percentage varies from 76% in Region VII to approximately 94% in Regions VI and VIII." (*Ibid.*, p. 33).

In any event, however, the possibility of occasional local friction does not provide a relevant legal basis for depriving law abiding persons of their legal rights. *Buchanan* v. *Warley*, 245 U.S. 60, 80-81 (1917); *Mitchell* v. *United States*, 313 U.S. 80, 97 (1941); *Shelley* v. *Kraemer*, 334 U.S. 1, 21 (1948). This Court has sturdily refused to permit the standards of the Constitution to be set at the larrikinalian level demanded by local ruffians and Ku-Klux-Klan-like demagogues. See *Moore* v. *Dempsey*, 261 U.S. 86 (1923) (mob violence); *Cantwell* v. *Connecticut*, 310 U.S. 296, 303 (1940) (street argument); *Hague* v. *C.I.O.*, 307 U.S. 496, 516 (1939) (anticipated public disorder, but no showing of inability to control it.) Also *Cf. Terminiello* v. *Chicago*, 337 U.S. 1 (1949) (speech before riotous and turbulent crowd); *Kunz* v. *New York*, 340 U.S. 290, 296 (1951) (speech likely to stir strife); *Feiner* v. *New York*, 340 U.S. 315 (1951) (speech which actually incited crowd). This Court was not frightened by threats of large scale violence nor deemed it necessary to espouse a formal policy of "gradualism", when it ordered the end of racial discrimination, whether in the form of segregation or otherwise, in voting, interstate travel, land ownership and occupancy, employment, public accommodations, graduate education, jury service, and other areas of daily life.[9]

[9] See numerous cases cited in our Brief for AVC on the previous reargument (1953 Term), p. 16, ftnts. 7-13. Some instances of awful predictions of dire violence which never materialized can

Throughout this experience in desegregation, the phobias of predicted violence proved to be wraiths, fantasies and myths. Here and there, one or a few hoodlums created localized tensions and anxieties. But the vast majority of people accommodated themselves to and accepted the change in their pattern of racial relations which, this Court decreed, was required by the Constitution. See Comment, *Racial Violence and Civil Rights Law Enforcement*, 18 U. of Chi. L. Rev. 769 (1951).

The unfortunate truth is that considerable time, perhaps years, may elapse before all the public schools are fully integrated. Residential segregation alone will greatly minimize the effect of this Court's rulings in these cases. There are multitudes of areas inhabited almost entirely by white persons or almost entirely by colored persons. The student body of the schools in those areas will have the same hue as the residents of the neighborhood.

Moreover, the lag in the law and the inhibiting effect of the mores and extra-legal pressures in particular communities, when added to the accumulated racial patterns of residence, and other factors, will envelope the process of desegregation with ample "gradualism". *Cf.* Ashmore, *The Negro and the Schools*, pp. 134-139 (1954); Leflar and Davis, *Segregation in the Public Schools—1953*, 67 Harv. L. Rev. 377, 404-420 (January 1954); Frank, *Can Courts Erase the Color Line?*, 21 J. of Negro Educ. 304 (1952).

Whatever may be one's thoughts as to the extent of time which may be desirable, from an administrator's standpoint, for adjustment to a non-segregated system of public education, this Court need not and ought not water down the equal protection guarantee of the Constitution through the formal espousal of a legal doctrine of "gradualism".

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be seen in the brief for the State of Virginia (pp. 14, 18-20) in *Morgan* v. *Virginia*, 328 U.S. 373 (1945 Term, No. 704), in the *amicus* brief filed by the Attorneys General of eleven States (p. 9) and in the brief for the University of Texas Law School (p. 175) in *Sweatt* v. *Painter*, 339 U.S. 629 (1949 Term, No. 44), and in the *amicus* brief by Rep. Sam Hobbs of Alabama (p. 5) in *Henderson* v. *United States*, 339 U.S. 816 (1949 Term, No. 25).

QUESTION 5

"5. On the assumption on which questions 4(a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4(b),

(a) should this Court formulate detailed decrees in these cases;

(b) if so, what specific issues should the decrees reach;

(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

THE TERMS OF THE DECREES WHICH WE SUGGEST

We have indicated above our belief that this Court should not undertake to encompass in its decree all conceivable local conditions and educational problems or to formulate a decree attempting to foresee and meet every possible contingency concerning the many individuals and circumstances involved in readjusting school districts, educational methods, patterns of pupil attendance, the assignment of teachers, etc. to meet constitutional standards. Nor should this Court do so vicariously through a special master. Such problems, to the extent that they are submitted to the judicial ken, are properly the initial concern of courts of first instance. Moreover, those courts cannot deal with such problems in identical manner. Differences in facts and unforeseen circumstances may compel variations in both procedure and solution.

Nevertheless, the courts of first instance should not be left entirely at large. Pursuant to the views expressed above, we urge that this Court remand these cases to the courts of first instance with the following directions:

(a) That the courts of first instance order and enjoin the respective boards of education:

(1) to admit and educate any applicant (if qualified on the basis of, and subject to, proper scholastic criteria which take no regard of his race or ancestry, including normal geographic school boundaries where such boundaries are prescribed) in any school in which any other person similarly situated, but without regard to race, color, or ancestry, would be admitted and educated; the board may, if it wishes, choose to comply with this requirement by assigning children to schools in accordance with normal geographic school boundaries which are based on proximity of residence and accessibility to the school and not on race, color or ancestry;

(2) as to any student who will thereafter be new to a particular school, to assign him to a school on the basis of normal residential boundaries not based on race or color, or, if no boundaries are prescribed, on the basis of reasonable criteria which do not include race or color; where no boundaries are prescribed, the board may, if it wishes, permit the student to choose which school he will attend, but shall not require him to file an application as a prerequisite to obtaining unsegregated education;

(3) to refrain, in the administration of their respective schools systems, from making any distinction, or providing any difference in treatment or education, solely on the basis of race, color, or ancestry, with respect to any student or other persons; and

(4) to comply with the above provisions not later than the beginning of the school term next following the issuance of this Court's decision.

(b) That the court of first instance:

(1) shall retain jurisdiction of the cases for such time as that court deems necessary to deal, upon motion by either side, with any special problems that may

arise in complying with the provisions mentioned above;

(2) may allow such additional time to the respective board of education, but not in excess of one school term at any one time, as the board of education on the basis of unusual conditions involving technical or administrative difficulties then existing, proves, by substantial and probative evidence at open hearings before the court, is needed by the board to effectuate compliance with this Court's decree; and

(3) shall not consider opposition and hostility by part of the community to desegregation of public education as constituting in themselves sufficient basis for delaying compliance with this Court's decree.

If the above directives are included in this Court's decree, we think that the court of first instance should be left free, subject to appellate review of any error committed, to adopt whatever procedures it deems wise in prescribing such additional specific terms, not inconsistent with this Court's decree, as may be necessary in the particular case to provide equal, unsegregated education to each person who desires it.

CONCLUSION

In view of the advanced status of desegregation in Kansas, the District of Columbia, and Delaware, we assume that in the cases from those areas (Nos. 1, 4, 5), the school authorities would have no objection to decrees containing the terms suggested above and effective September, 1955.

No different treatment is required, nor should be made, either for the other two cases now before this Court or for any other public school desegregation situations that we are aware of.

It is significant that although the appellees in the Virginia case stated that racial segregation was designed to prevent violence and reduce resentment, they frankly admitted that "The passage of time has removed violence

and substantially removed resentment in Virginia." Brief for Appellees, No. 191, Oct. Term, 1952, p. 17.

In states such as South Carolina, Georgia, Mississippi, and Alabama, and some parts of a few other states, integration of the public schools will involve a greater emotional adjustment. But we believe that the people of these areas can and will make that adjustment much easier than some of their present political leaders give them credit for.[10]

The events of World War II and its aftermaths have in the past several years brought about a vast reorientation of the community attitudes which formerly buttressed racial segregation. More and more, the people of the South are striving to discard the discriminations which grew from previous prejudices. In ever growing degree it is apparent that they would travel even faster toward that objective as the shackles of legal prohibitions against their voluntary association are removed.

Most of the people of the South respect the Constitution. They will comply with firm directives embodied in decrees of this Court. The more positive the ruling, the greater will be its acceptance. We believe that the future course of desegregation in the South will substantiate the experience of public school desegregation in New Jersey: ". . . that the best way to integrate is to do it." Bustard, *supra*, 21 J. of N. Ed. 275, 285.

AMERICAN VETERANS COMMITTEE, INC.,
Amicus Curiae.

By PHINEAS INDRITZ,
National Counsel,
American Veterans Committee, Inc.

[10] Compare the observation in *Freedom to Serve*, *supra*, p. 44: "Integration of the two races at work, in school, and in living quarters did not present insurmountable difficulties. . . . The enlisted men were far more ready for integration than the officers had believed." The same phenomenon was observed when white students greeted Negro students after the *Sweatt* and *McLaurin* decisions opened the doors of the Universities, and is now being seen in the vast majority of the elementary and secondary schools which have recently been desegregated.